IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

MAURICIO ESPINAL CANALES AND JESUS ALBERTO JOYA, Individually and On Behalf of All Others Similarly Situated,	§	
Plaintiffs,	§	No.__________________
v.	§	
F & F INTERESTS, INC., SKF INTEREST, INC., and GARY FARINE,	§	
Defendants.	§	

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiffs Mauricio Espinal Canales and Jesus Alberto Joya, individually and on behalf of all others similarly situated (referred to as "Plaintiffs") bringing this collective action and lawsuit on behalf of themselves and all other similarly situated employees to recover unpaid overtime wages from Defendants F&F Interest, Inc., SKF Interest, Inc., and Gary Farine (referred to as "Defendants"). In support thereof, they would respectfully show the Court as follows:

I. NATURE OF SUIT

1. Plaintiffs' claims arise under the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219 ("FLSA").

2. The FLSA was enacted to eliminate "labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers … ." 29 U.S.C. § 202(a). To achieve its humanitarian goals, the FLSA defines appropriate pay deductions and sets overtime pay, minimum wage, and recordkeeping requirements for covered employers. 29 U.S.C. §§ 206(a), 207(a), 211(c).

3. Defendants violated the FLSA by employing Plaintiffs and other similarly situated nonexempt employees "for a workweek longer than forty hours [but refusing to compensate them] for [their] employment in excess of [forty] hours … at a rate not less than one and one-half times the regular rate at which [they are or were] employed." 29 U.S.C. § 207(a)(1).

4. Defendants violated the FLSA by failing to maintain accurate time and pay records for Plaintiffs and other similarly situated nonexempt employees as required by 29 U.S.C. § 211(c) and 29 C.F.R. pt. 516.

5. Plaintiffs bring this collective action under 29 U.S.C. § 216(b) on behalf of themselves and all other similarly situated employees to recover unpaid overtime wages.

II. Jurisdiction and Venue

6. The Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b) because it arises under the FLSA, a federal statute.

7. Venue is proper in this district and division pursuant to 28 U.S.C. § 1391(b)(1), (2) because Defendants reside in the Galveston Division of the Southern District of Texas and/or a substantial part of the events or omissions giving rise to the claim occurred in the Galveston Division of the Southern District of Texas.

III. THE PARTIES

8. Plaintiff Mauricio Espinal Canales is a resident of Harris County, Texas and was employed by Defendants within the meaning of the FLSA during the three (3) year period preceding the filing of this action. In performing his duties, Espinal was engaged in commerce or in the production of goods for commerce. Espinal regularly worked in excess of forty (40) hours per week. However, Espinal did not receive overtime pay for hours worked in excess of forty (40) at a rate of time and one-half as required by the FLSA.

9. Plaintiff Jesus Alberto Joya is a resident of Harris County, Texas and was employed by Defendants within the meaning of the FLSA during the three (3) year period preceding the filing of this action. In performing his duties, Joya was engaged in commerce or in the production of goods for commerce. Joya regularly worked in excess of forty (40) hours per week. However, Joya did not receive overtime pay for hours worked in excess of forty (40) at a rate of time and one-half as required by the FLSA.

10. Defendant F&F Interests, Inc. is a Texas corporation that may be served with process by serving its registered agent, Gary Farine, at 2110 Bay Hill, League City, Texas 77573. Alternatively, if the registered agent of F&F Interests, Inc. cannot with reasonably diligence be found at the company's registered office, F&F Interests, Inc. may be served with process by serving the Texas Secretary of State pursuant to TEX BUS. ORG. CODE § 5.251 and TEX CIV. PRAC. & REM. CODE § 17.026.

11. Defendant SKF Interest, Inc. is a Texas corporation that may be served with process by serving its registered agent, Stephen Schulz, at One Moody Plaza, 18th Floor, Galveston, Texas 77550. Alternatively, if the registered agent of SKF Interest, Inc. cannot

with reasonably diligence be found at the company's registered office, SKF Interest, Inc. may be served with process by serving the Texas Secretary of State pursuant to TEX BUS. ORG. CODE § 5.251 and TEX CIV. PRAC. & REM. CODE § 17.026.

12. Defendant Gary Farine is an individual that may be served with process at 2110 Bay Hill, League City, Texas 77573 or wherever he may be found.

13. Whenever in this Complaint it is alleged that Defendants committed any act or omission, it is meant that the Defendants' officers, directors, vice-principals, agents, servants or employees committed such act or omission and that at the time such act or omission was committed, it was done with the full authorization, ratification or approval of Defendants or was done in the routine and normal course and scope of employment of the Defendants' officers, directors, vice-principals, agents, servants or employees.

IV. Facts

14. Defendants own multiple Pilgrims Cleaners in Galveston, La Marque, League City, Friendswood, Alvin, Houston, South Houston, Katy, Sugarland and Dickinson, Texas. It has offices in the territorial jurisdiction of this Court.

15. Espinal was employed with Defendants from approximately 2014 through September 2016 as a driver.

16. Joya was employed with Defendants from approximately May 2013 through September 2016 as a driver.

17. During Plaintiffs' employment with Defendants, they were engaged in commerce or the production of goods for commerce.

18. During Plaintiffs' employment with Defendants, the company was an enterprise engaged in commerce because they (1) have employees engaged in commerce or in the production of goods for commerce or had employees handling, selling or otherwise working on goods or materials that had been moved in or produced for commerce by others and (2) have an annual gross volume of sales made or business done of at least $500,000.

19. Drivers, including Espinal and Joya, regularly work in excess of forty (40) hours per week, working Monday through Friday at least twelve (12) hours each day.

20. Defendants know or reasonably should know that Plaintiffs works in excess of forty (40) hours per week.

21. Defendants do not pay drivers, including Espinal and Joya overtime "at a rate not less than one and one-half times the regular rate at which he [was] employed." 29 U.S.C. § 207(a)(1).

22. Instead, Defendants pay drivers, including Espinal and Joya, a salary which does not take into consideration the number of hours worked per week.

23. On information and belief, these same illegal pay practices were applied to all employees of Defendants who were compensated in the same or similar manner to that of Plaintiffs.

24. Defendants fail to maintain accurate time and pay records for Plaintiffs as required by 29 U.S.C. § 211(c) and 29 C.F.R. pt. 516.

25. Defendants know or show reckless disregard for whether its pay practices violate the FLSA.

26. Defendants are liable to Plaintiffs for their unpaid overtime wages, liquidated damages and attorney's fees and costs pursuant to 29 U.S.C. § 216(b).

27. All drivers and all other employees employed by Defendants are similarly situated to Plaintiffs because they (1) have similar job duties; (2) they were misclassified as exempt from overtime compensation or was an hourly employee and now seek payment for overtime hours worked; (3) regularly work in excess of forty hours per week; (4) are not paid overtime for the hours they work in excess of forty per week as required by 29 U.S.C. § 207(a)(1) and (5) are entitled to recover their unpaid overtime wages, liquidated damages and attorneys' fees and costs from Defendants pursuant to 29 U.S.C. § 216(b).

V. Count One- Failure to Pay Overtime in Violation of 29 U.S.C. § 207(a)

28. Plaintiffs adopt by reference all of the facts set forth above. *See*, FED. R. CIV. P. 10(c).

29. On information and belief, Plaintiffs were a nonexempt employee under the guidelines of the FLSA.

30. As nonexempt employees, Plaintiffs were legally entitled to be paid at one and one-half times their "regular rate" for all hours worked in excess of forty (40) during each seven (7) day workweek. 29 U.S.C. § 207(a).

31. Defendants failed to pay Plaintiffs for all hours worked in excess of forty (40) at one and one-half times their regular rate.

32. Instead, Defendants paid Plaintiffs at fixed sum without regard to the number of hours worked per week.

33. As a result, Plaintiffs were regularly "shorted" on his paycheck by not being paid at a rate of time and one-half for hours worked in excess of forty (40).

34. If Defendants classified Plaintiffs as exempt from the overtime requirements of the FLSA, they were misclassified because no exemption excuses the company's noncompliance with the overtime requirements of the FLSA.

35. Defendants know or show a reckless disregard for whether its pay practices violate the overtime requirements of the FLSA. In other words, Defendants willfully violates the overtime requirements of the FLSA.

VI. Count Two—Failure To Maintain Accurate Records in Violation of 29 U.S.C. § 211(c)

36. Plaintiffs adopt by reference all of the facts set forth above. *See*, FED. R. CIV. P. 10(c).

37. The FLSA requires employers to keep accurate records of hours worked by and wages paid to nonexempt employees. 29 U.S.C. § 211(c); 29 C.F.R. pt. 516.

38. In addition to the pay violations of the FLSA described above, Defendants have also failed to keep proper time and pay records as required by the FLSA.

VII. Count Three—Collective Action Allegations

39. Plaintiffs adopt by reference all of the facts set forth above. *See*, FED. R. CIV. P. 10(c).

40. On information and belief, other employees have been victimized by Defendants' violations of the FLSA identified above.

41. These employees are similarly situated to Plaintiffs because, during the relevant time period, they held similar positions, were compensated in a similar manner and were denied overtime wages at a rate of time and one-half for hours worked in excess of forty (40).

42. Defendants' policy or practice of failing to pay overtime compensation is a generally applicable policy or practice and does not depend on the personal circumstances of the putative class members.

43. Since, on information and belief, Plaintiffs' experiences are typical of the experiences of the Members of the Class, collective action treatment is appropriate.

44. All employees of Defendants, regardless of their rate of pay, who were not paid at their proper overtime rate for hours worked in excess of forty (40) are similarly situated. Although the issue of damages may be individual in character, there is no detraction from the common nucleus of liability facts. The Class is therefore properly defined as:

> All current and former drivers and all other employees employed by Defendants during the last three years.

45. Defendants are liable to Plaintiffs, all other drivers and any other employees employed by Defendants for the difference between what it actually paid them and what it was legally obligated to pay them.

46. Because Defendants know and/or show a reckless disregard for whether its pay practices violate the FLSA, the company owes Plaintiffs, all other drivers and any other

employees employed by Defendants their unpaid overtime wages for at least the last three years.

47. Defendants are liable to Plaintiffs, all other drivers and any other employees employed by Defendants in an amount equal to their unpaid overtime wages as liquidated damages.

48. Defendants are liable to Plaintiffs, all other drivers and any other employees employed by Defendants for their reasonable attorneys' fees and costs.

49. Plaintiffs have retained counsel well versed in FLSA collective action litigation who is prepared to litigate this matter vigorously on behalf of Plaintiffs and any other Members of the Class.

VIII. Jury Request

50. Plaintiffs request a trial by jury.

IX. Prayer

51. Plaintiffs pray for the following relief:

a. an order allowing this action to proceed as a collective action under 29 U.S.C § 216(b);

b. judgment awarding Plaintiffs, all other drivers and any other employees employed by Defendants all unpaid overtime compensation, liquidated damages, attorneys' fees and costs;

c. prejudgment interest at the applicable rate;

d. postjudgment interest at the applicable rate;

e. incentive awards for any class representative(s); and

f. all such other and further relief to which Plaintiffs, all other drivers and any other employees employed by Defendants may show themselves to be justly entitled.

Respectfully submitted,

MOORE & ASSOCIATES

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